



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF MARCH 27, 2003**

CALL TO ORDER: Chairperson Cohen called the meeting to order at 7:05 p.m.

PRESENT: Chairperson Cohen, Vice Chairperson Weaver,
Commissioners Natarajan, Sharma, Wieckowski, Thomas

ABSENT: Harrison

STAFF PRESENT: Dan Marks, Planning Director
Larissa Seto, Senior Deputy City Attorney
Mitch Moughon, Senior Civil Engineer
Kunle Odumade, Senior Transportation Engineer
Kathleen Livermore, Senior Planner
Avan Gangapuram, Associate Planner
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Mark Eads, Video Technician

APPROVAL OF MINUTES: None

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 4 AND 7.

Commissioner Cohen requested a separate vote for Item Number 1. He recused himself, because he had had a conflict since the beginning of the project.

IT WAS MOVED (WIECKOWSKI/WEAVER) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 1:

Item 1. DHAM RESIDENCE GRADING & LANDSCAPING – 1130 Highland Terrace – (PLN2003-00041) – to consider a Planned District Minor Amendment to P-96-11 and Preliminary Grading Plan for changes to grading and landscaping for a previously approved new single family residence. This project is categorically exempt from CEQA review under Section 15303, New Construction or Conversion of Small Structures. (Continued from October 24, 2002 and November 21, 2002.)

Commissioner Sharma asked if there was a built-in system to prevent future non-permitted work, such as the huge retaining wall and the non-permitted grading that had been performed on this project.

Planning Director Marks replied that inspections and reviews of a project were made as it proceeded and generally provided the necessary City oversight. The landscaping was usually the last part of a project and this came in fairly late in the process.

HOLD PUBLIC HEARING;

AND
FIND PLN2003-00041 IS CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW PER CEQA SECTION 15303, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES;

AND
RECOMMEND APPROVAL OF THE OPEN SPACE EASEMENT MODIFICATIONS AS INDICATED IN EXHIBIT "C" TO THE CITY COUNCIL;

AND
APPROVE PLN2003-00041 AS INDICATED IN EXHIBIT "A", BASED ON FINDINGS FOR PRELIMINARY GRADING PLAN AND SUBJECT TO CONDITIONS OF APPROVAL INDICATED IN EXHIBIT "B".

The motion carried by the following vote:

AYES:	5 – Natarajan, Sharma, Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Harrison
RECUSE:	1 - Cohen

IT WAS MOVED (THOMAS/WEAVER) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 4 AND 7:

- Item 4. WASHINGTON WEST SHOPS – 2500 Mowry Avenue – (PLN2003-00108)** - to consider an amendment to the Finding for Site Plan and Architecture for the Washington West Retail Shops to include fencing along the perimeter of the site and a Zoning Text Amendment to allow for fencing, no greater than 4 feet in height, with a landscape treatment as a screening element in areas along parking lots in commercial zoning districts. The Finding for Site Plan and Architecture project is categorically exempt from CEQA review, per Section 15301, Existing Facilities. The Zoning Text Amendment is exempt from CEQA review, per Section 15061, because the project has no potential for causing a significant effect on the environment.

CONTINUE TO APRIL 24, 2003.

- Item 7. HIGHLAND PARK - 3555 Peralta Boulevard & 37245 Sequoia Road - (PLN2003-00196)** - to consider an extension for Vesting Tentative Tract Map 7201 for a 60-unit town home project (PLN2000-00142) in the Centerville Planning Area. A Draft Negative Declaration was approved by the City Council with the General Plan amendment for this project in February 2000.

HOLD PUBLIC HEARING;

AND
APPROVE THE ONE-YEAR EXTENSION TO JULY 13, 2004 FOR VESTING TENTATIVE TRACT MAP 7201 AS SHOWN ON EXHIBIT "A" BASED UPON ALL PREVIOUS FINDINGS AND SUBJECT TO THE ORIGINALLY APPROVED CONDITIONS AS IDENTIFIED IN EXHIBIT "B" AND REVISED PARKLAND DEDICATION-IN-LIEU FEE CONDITION OUTLINED IN EXHIBIT "C".

The motion carried by the following vote:

AYES:	6 – Cohen, Natarajan, Sharma Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Harrison
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

Item 2. WALMART – 3045 Skyway Court – (PLN2000-00070; PLN2001-00290) - to consider Certification of an EIR (SCH#2001082059), a Conditional Use Permit and Preliminary Grading Plan for a 155,652 (approximate) square foot Wal-Mart store at the intersection of Osgood Road and Skyway Court in the Industrial Planning Area. An Environmental Impact Report was prepared and circulated for this project.

Associate Planner Gangapuram stated that in 1999, the City received applications for a Conditional Use Permit application and an Environmental Impact Assessment. On May 23, 2000 City Council adopted the mitigated negative declaration and approved the CUP. On March 1, 2002 the courts directed that an EIR be prepared to analyze the potential impacts of the proposed project. On August 13, 2001 a notice of preparation was mailed. On August 8, 2002 a public hearing was held by the Planning Commission concerning the Draft EIR. On December 2, 2002 the Final EIR was released and portions of the final EIR were recirculated on December 27, 2002. On March 17, 2003 the Final EIR was released with comments.

Planning Director Marks noted that the Commissioners had received many communications regarding this item. Staff believed that there was sufficient information in the record to allow the Planning Commission to take an action on this item. Double the usual time had been allowed for comments from the public. He introduced Arlyn Purcell, consultant with Impact Sciences, who prepared the EIR.

Arlyn Purcell, consultant with Impact Sciences, gave the overview of the Final EIR. She noted that the Final EIR consisted of the original Draft EIR, the first responses to comments, the recirculated portions of the EIR (REIR), and the second responses to comments. Major issues raised on the Draft EIR or the RPEIR included:

- Draft EIR treatment of Commissions' prior findings on the project
- Relationship of project to the Warm Springs BART station and the upcoming Specific Plan
- Assumptions and methodologies used for traffic analysis
- Feasibility and effectiveness of traffic mitigation at Osgood Road and Auto Mall Parkway
- Assumptions used for analysis of project air quality impacts
- Air quality mitigation measures
- Health risk assessment
- Project storm drain system
- Mitigation for water quality impacts.
- The EIR consultant identified the comments made by commenters and provided an explanation about the responses.
- Planning Commission findings – Commenters expressed concern about the EIR's reliance on the prior adopted City Council findings that were the basis for the policy consistency analysis. The City Council findings were used because they were the official findings of the City and were upheld by Alameda County Superior Court. While land use and economic policy were legitimate issues, they were not CEQA issues, per se.
- BART Warm Springs Station and Specific Plan – Commenters expressed concern about the future BART Warm Springs station in the EIR. BART, in particular, stated that the Warm Springs Specific Plan process was the best avenue for making a decision. The final project site was not part of the Warm Springs Specific Plan detailed study area. It was speculative to analyze the project in the context that had not yet been prepared. The future BART station traffic impact was included.

- Traffic analysis assumptions and methods – Commenters questioned assumptions made regarding trip generation and trip distribution, which were considered too low and trips using I-680 should be higher. The assumptions were obtained from the Institute of Transportation Engineers, which was the standard source for this kind of information. The Final EIR confirmed that the assumptions were valid.
- Mitigations at Osgood Road and Auto Mall Parkway – Commenters questioned the feasibility and effectiveness of mitigation measures. The improvements should be finished by May 2003 and would be in place prior to the project. Project impacts at the intersection would then be less than significant. However, there would still be congestion at that intersection.
- RPEIR commenters questioned whether improvements under construction matched what had been analyzed in the Draft EIR, which was confirmed.
- Quality impacts – Standard Air Quality model had been updated and project schedule was clarified. Project would not result in significant emissions impacts; however, cumulative significant impacts would occur.
- Construction emissions – Quantitative analysis of construction exhaust emissions was not necessary. Controls would mitigate brief construction exhaust emissions to less than significant. The Final EIR analyzed construction dust impacts in accordance with Air District/CEQA guidelines.
- Saturday Air impacts – Analyzation of air pollutant emissions were based on a seven-day week. Two Saturdays were used for the weekend impacts, rather than Sunday, which would be lower. Results would still be less than significant.
- Air quality mitigation measures – Several air quality mitigations were added.
- Special analysis of Cancer risk – Detailed responses were made to all comments and the project would not result in any health risk impacts.
- Project storm drain system – The Project drainage plans were revised to provide adequate flood storage. The Proposed detention would replace lost flood storage and would lessen the increase in peak runoff leaving the site.
- Water quality mitigations – The Measure relied on the performance standard, which was considered a proper means of mitigation as the treatment standard that was currently in effect at time that the building permit was issued. Supplemental treatment would be performed, if required.

Chairperson Cohen asked for questions of the consultants by the Commission.

Commissioner Sharma asked why BART was not considered an issue at the present time and what improvements would be made on Auto Mall Parkway.

Consultant Purcell stated that the issue was if the Warm Springs Specific Plan process should be used to decide this project. That process is still in the future and it was speculative to guess what would be decided as appropriate land uses in the area.

Senior Transportation Engineer Odumade replied that the improvements that were currently under construction were the addition of a second left-turn lane/through lane traveling westbound on Auto Mall Parkway and one more through-lane toward the freeway. Northbound on Osgood Road, a second left-turn lane, a through lane and a right-turn lane would be added. Southbound on Osgood Road, a through lane would be added.

Commissioner Natarajan asked that the consultant address the need to adopt a statement of overriding consideration by the Commission.

Consultant Purcell stated that the EIR preparers were not involved with that statement.

Planning Director Marks replied that the draft statement of overriding consideration stated that there would be significant cumulative air quality impact, which was the only significant unmitigated impact identified in the Final EIR. The basis for overriding that impact was largely economic with benefits to the City in employment and higher economic benefits.

Commissioner Thomas asked how far back the eastbound through lane would start on Auto Mall Parkway and if there would still be two lanes past Home Depot.

Senior Transportation Engineer Odumade replied that a lane would be added on the other side of the bridge over the railroad tracks.

Commissioner Wieckowski believed that a reasonable consideration of the BART project had to be included in the report. The Final EIR stated that a BART remark was beyond the scope of the revised project; however, other comments had been made that were beyond the scope.

Consultant Purcell replied that the actual numbers reflected the assumptions, so the traffic from the Warm Springs station was included in the traffic model projections used in the Draft EIR through the year 2020. The analysis included ABAG population projection to 2020.

Commissioner Wieckowski stated that some of the project opponents believed that some of the future BART impacts should be included in the analysis, because .4 mile was not so far away that it would not impact traffic.

Consultant Purcell stated that the Warm Springs Specific Plan (with its specific land uses) was different from the Warm Springs station, itself.

Chairperson Cohen replied that it seemed that no other impacts on the potential BART station had been considered other than the traffic impacts.

Consultant Purcell was not sure what other impacts he was looking for.

Commissioner Wieckowski stated that BART expected development within a radius of up to one-half mile of higher density, mixed use and the type of commercial development that would create more pedestrian traffic from the BART station to this impacted area. Nowhere in the Final EIR was there any consideration that pedestrians might be walking to Wal-Mart. The "big box" philosophy was that everyone would drive. In his opinion, the traffic impacts needed to be considered. None of the BART issues had been addressed, other than to say that it was beyond the scope. In his opinion, this project would impact the regional planning development within the Warm Springs area.

Consultant Purcell stated, in her opinion, that these were land use concerns, which were beyond the scope of this EIR. CEQA did not require an analysis of a "worst case" scenario and it discouraged speculation. It was not proper for this document to speculate on future land uses based upon a plan that did not exist yet.

Chairperson Cohen asked if the Final EIR took into consideration the impacts on I-680 and I-880.

Consultant Purcell replied that an analysis was performed on regional roadway impacts that was consistent with congestion management agency requirements.

Chairperson Cohen asked again if the EIR took into consideration the impacts that this would have on I-680 and I-880 that would, in effect, be parallel to this project.

Consultant Purcell replied that she would research his question.

Chairperson Cohen stated that the land uses seemed to be minimized when it came to a CEQA evaluation. Clearly the guidelines stated that economic and social information could be included and presented in whatever form the agency desired, and it could be used to determine the significance of the physical changes caused by the project. It also stated that one could trace effects on land use to the physical changes. BART was thought of as a train station plus land use. Twenty years ago, it might have been considered speculation, but it was not speculation at this time to consider the inherent development that had taken place around BART stations throughout the Bay Area.

Consultant Purcell agreed that one of the purposes of developing a transit system was to create transit oriented development. However, there was no land use plan for such development at Warm Springs. She believed that this was a disagreement that would go nowhere.

Chairperson Cohen read from the staff report that BART intended to use local jurisdiction support for appropriate transit oriented land uses, and he believed that this was beyond speculation.

Consultant Purcell did not believe it was appropriate for her to comment on the staff report.

Chairperson Cohen opened the public hearing.

Bob Karn, Robert A. Karn & Associates, Civil Engineer, thanked Commissioner Cohen and indicated he will keep his comments to 7-8 minutes and requested he be given more time at the end of the hearing to respond to comments. He introduced other staff members. He displayed a site map and landscape plan. Main access to the store would be off Osgood Road and through a new signalized entrance. Drainage would filter through landscaped areas. Screening would be installed along the rear between the back of the store and the BART tracks. Container storage would also be located at the rear and would be screened by a wall and landscaping. The grading plan was showed and he stated that the FEMA map was incorrect. He pointed out the building elevations that were behind the Commissioners on the wall and noted that this facility could not be expanded to become a super store. He read portions of a letter from attorneys Steefel, Levitt and Weiss dated March 27, 2003 and asked that this letter become part of the comments relating to conditions of approval.

Commissioner Natarajan asked what the building uses would be.

Mr. Karn stated that the uses were set by Wal-Mart and were the same typical uses as were in every other Wal-Mart.

Commissioner Natarajan asked if the garden center and tire and lube center were a part of every Wal-Mart store and if the 190 parking spaces (that were more than required by the City) were standard Wal-Mart practice, as well.

Mr. Karn stated that she was correct about the garden center and the tire and lube center. Rare exceptions occurred when there was a site constraint that did not allow them. Minimum parking was never provided by Wal-Mart, because customer convenience and pedestrian safety was enhanced by providing more parking than was mandated by a city. Additional development was expected to develop around the site and their overflow parking would be accommodated here.

Commissioner Natarajan had noted that on the Wal-Mart website there were three Wal-Mart Eco Stores, and she asked where they were and what the salient features of these stores were.

Cynthia Lin, Wal-Mart, stated that several Eco Stores were opened a number of years ago, but none had been opened recently.

Commissioner Natarajan asked if these stores had been required or if it was something that Wal-Mart had "opted to do." She noted that many other "super stores" were shutting down and she wondered what other uses this "big box" could be used for if this store closed.

Ms. Lin stated that the Eco Stores had opened before her employment with Wal-Mart and she had no knowledge of their backgrounds. She offered to research that and get back to the Commission.

Mr. Karn replied that Wal-Mart was the most successful company in the world and KMart had not been successful for years. He stated that he had worked on KMart plans many years ago that did not reach fruition. KMart had also opened Pace stores, which were similar to Sam's Club stores. They were all Sam's Clubs now. He stated that Wal-Mart did not close stores and leave them vacant.

Ms. Lin stated that the first store in California opened in 1990. Now there were more than 100 stores throughout the state, none had been closed down and the company continued to grow.

Commissioner Natarajan understood that there were almost 300 Wal-Mart stores that had closed during the five years.

Ms. Lin stated that when stores could not be expanded, they were relocated. Wal-Mart had a team dedicated to leasing out those properties, which were often leased out to other retailers, call centers and for other purposes.

Commissioner Sharma quoted from the recent letter that the Commission had received which stated that a high volume of foot traffic was not anticipated at this location. He asked if this meant that a high volume of automobiles was expected. Since BART was to be located .4 miles from this store, did Mr. Karn still believe that pedestrian accommodations did not have to be made? The huge parking lot seemed to suggest that much more traffic would be created by this project.

Dr. Sharma asked about shopping carts and Wal-Mart's objection to wheel-locking devices. Mr. Karn stated that this Wal-Mart was expected to have traffic similar to the adjacent retailers, such as Fry's and Home Depot. He stated that if pedestrian traffic caused shopping carts to end up on the street, appropriate measures would be taken. He believed that it was inappropriate to address a problem that did not exist at this time. He did not agree that the large parking lot assumed that more traffic would be created. He claimed that the large parking lot was for the convenience of the customers.

Commissioner Wieckowski noted that mitigation measures to reduce vehicle emissions were to coordinate a car pool/van pool program with Phase 2 employers. He asked what kind of experience Wal-Mart had with car pool/van pool programs in other locations. It seemed that a large parking lot would not encourage car-pooling.

Mr. Karn replied that as the out parcels were developed, a Wal-Mart person would be assigned to set up the program, as the need arose. People who car pooled did not necessarily car pool because there was no place to park, but because that was their thought process, mentality and desire.

Commissioner Wieckowski asked what Wal-Mart did to encourage that kind of mentality. He wondered at the word "consider" when referring to on-site childcare and he asked what experience Wal-Mart had had with on-site childcare. He asked where the showers and lockers would be placed in the store for the employees who bicycled to work

Mr. Karn stated that individuals thought that way or they did not. The program would be put in place, the employees would be notified and they would be encouraged to participate in it. He stated that childcare was an allowed use for the out parcels, and it was hoped that a childcare provider would consider childcare adjacent to employment and retail centers. The facility for bicyclers would be near the storeroom and staff lounge at the back. Programs were developed and the employees were notified of them. It was not up to Wal-Mart to force employees to use them.

Commissioner Wieckowski noted that these programs were to be part of the mitigations and he wanted some idea how these mitigations had worked in other stores in California. He asked if it was true, as noted in the March 27th letter from attorneys Steefel, Levitt and Weiss, that no other locations within the City were being considered.

Mr. Karn stated that this project had been tailored to the City and these were special measures that would be taken to ensure that Wal-Mart became a part of the community.

Judy Davidoff, Steifel, Levitt and Weise, Attorneys, stated that the letter indicated that this location was not an alternative location. Wal-Mart was very committed to this store at this location.

Commissioner Wieckowski asked if she could speak to some opponents' contention that this Auto Mall Parkway location would thwart the Downtown development that the City envisioned by having an adverse effect on the local businesses.

Ms. Davidoff stated that the location of "big box" retail was appropriate and compatible with what was planned for Downtown. The Thomas study concluded that Wal-Mart would not compete with Downtown uses and, in fact, they would be complimentary to each other. The Downtown use was different and it was expected to encompass small retail, restaurants, and entertainment. Wal-Mart would be competing with other "big box" retailers and the Irvington businesses would be benefited, because of the volume of people that Wal-Mart would bring into the District.

Commissioner Wieckowski recalled that the Thomas study pointed to other suitable "big box" locations, such as the Stevenson/Albrae Street intersection or the Catellus project. He asked for an opinion on the viability of Wal-Mart at those locations.

Ms. Davidoff stated that she was not privy to the analysis of various City sites, of which Wal-Mart might have other issues. Catellus and Pacific Commons had been a different type of retail at the time this project was moving forward. When the Commercial Industrial Overlay was adopted in the mid-1990s, this location was considered appropriate for "big box" retail and Wal-Mart agreed.

Commissioner Wieckowski asked if she believed that no other site in the City would have less significant environmental impacts than at this location.

Ms. Davidoff stated that she was not aware of any.

Commissioner Sharma asked if Wal-Mart employees would be able to afford to use a childcare facility, given their salaries, and would it be economically feasible for anyone to operate such a facility. Was this mitigation feasible?

Ms. Lin replied that many other large retailers were already in the area, such as Home Depot and Fry's, and she wondered if Commissioner Sharma was hinting that Wal-Mart did not pay competitive wages.

Commissioner Sharma reiterated that this would be the biggest store in the City and there would be hundreds of employees who would have hundreds of children, which might be a good reason to create a daycare center. He knew that Washington Hospital had a daycare on site.

Ms. Davidoff stated that daycare was a possible and desirable use on one of the pads. Wal-Mart's employees certainly used (and could afford) childcare.

Chairperson Cohen stated that Ms. Davidoff had indicated in her letter that Wal-Mart was not considering an alternative location for the project. He asked if Wal-Mart was considering opening another store on Stevenson Boulevard and Albrae or in any other location within the City.

Ms. Lin stated that Wal-Mart felt that anywhere along the I-880 corridor was an excellent area for Wal-Mart, but she was not privy to that kind of information and was unaware of any other specific sites.

Chairperson Cohen asked if another Wal-Mart representative could directly answer his question. If not, he asked that an answer be provided to the Commission before a decision was made. He asked, again, if Wal-Mart was considering opening another store within the Fremont borders in addition to, or instead of, the present site that was under consideration.

Ms. Lin replied that Wal-Mart was not considering another location instead of this one.

Chairperson Cohen asked was Wal-Mart, specifically, at the present time, considering another store, in addition to this store, if it was approved, or another location if it was not approved?

Ms. Lin stated that, to her knowledge, no other store location was under consideration instead of this location.

Chairperson Cohen asked if Wal-Mart was considering opening another store within the City of Fremont, in addition to this one, if this project was approved or instead of this store if it was not approved. This location invited the type of resistance that Wal-Mart had received, which might not take place in other locations in the City.

Ms. Lin disagreed that stores in other locations would not be opposed by the people who opposed Wal-Mart in this location. Ms. Lin indicated that Wal-Mart Corporation always looks for desirable sites to establish new stores. However, she was not aware of any new sites that were proposed in Fremont, in addition to the proposed Wal-Mart store.

Chairperson Cohen believed that the grounds for opposition would not be as strong in other locations as they were in this location.

Ms. Davidoff stated that an original site was much closer to the Warm Springs BART station, and the site was dropped because it was too close to that BART station, which was within the quarter-mile ring and would create exactly the conditions mentioned.

Chairperson Cohen opened the public hearing.

Commissioner Sharma disclosed that he had spoken with Mr. Wolfe during the month, but he had not discussed this item with him.

Mark Wolfe, VFCW Local 870, reminded the new Commissioners and the public that the Planning Commission had heard this project in 1999 and had voted it project down, mainly because it was incompatible with the vision of the City's General Plan. Since that time, circumstances had changed that made this project even less compatible with the City's General Plan and overall vision to create a city with vibrant, neighborhood-centered, livable, walkable downtown-focused communities. Since the 2000 Sedway report, Target, a direct competitor, had opened in the Downtown and was considered a vital component of the Downtown revitalization strategy. He believed that it would be a "huge blunder" if the proposed transit village near BART was ignored when making a decision on this project. He believed that tax revenues that would be generated by Wal-Mart would be shifted from other city, tax-generating stores, such as Target.

Dena Belzer, VFCW Local 870, stated that she worked for Strategic Economics, an urban firm based in Berkeley, and that it was considered a national expert on transit oriented development. She believed that cannibalization of sales would occur from present City retail stores, which included Target, rather than attracting sales from outside Fremont. Target should be filling the unfilled demand that the Sedway report found and the sales leakage from the City was not as great as when the report was written. The two neighborhood commercial districts' anchor stores would be negatively impacted. Much work had been put into the districts of Irvington (anchored by Albertson's and Long's) and Warm Springs (anchored by Safeway with a drug store). These stores, along with Target, would be in direct competition with Wal-Mart. Nine percent of Wal-Mart revenues came from prescription drugs and 22 percent came from convenience items (snack food, soda, health and beauty aids, etc.) Concerning long-term land use issues, which was not addressed in the EIR, the kinds of jobs that would be created from continuing to attract advanced industry employers would be better, higher paying jobs for the residents of Fremont. She said sales tax revenues leveled off after the "first kick" while property taxes increased over time. Wal-Mart was obviously a vehicle-oriented development, as were other "big box" retailers. Transit oriented development could be employment oriented, as well as residential oriented. The density, intensity and type of development that would be transit and pedestrian oriented at Warm Springs would not be consistent with Wal-Mart. She believed that Wal-Mart actually worked against the City's long-term goals.

Mr. Wolfe added that the project's traffic impacts had not been adequately addressed or mitigated. He referred to a Caltrans letter that stated the impacts from Wal-Mart had not been evaluated regarding impacts on the freeway, as had been requested. Flood storage concerns were voiced by the letter from the Alameda County Flood Agency. Under CEQA, the EIR was the City's responsibility to certify, although a consultant paid by Wal-Mart prepared it. If the analysis did not go far enough on land use or BART, the City could require that it be done and he urged the City to do so.

Commissioner Natarajan knew that Ms. Belzer had worked with transit oriented developments (TOD) all over California. It seemed clear what the use should be within the quarter-mile around the BART station. What kind of uses between the quarter-mile and half-mile radius would Ms. Belzer suggest that would support ridership?

Ms. Belzer replied that the quarter-mile radius was more relevant to residential development and the half-mile radius was more relevant to employment. At Warm Springs, the half-mile circle might become more important with an employment-based TOD, as residences might not be allowed, because of NUMMI.

Commissioner Sharma noted that there was a question as to whether there would be a gain of revenue or if a redistribution of revenue would occur. Was there a study that showed cannibalization of sales from City retail establishments? If that was so, the net tax result for the City would be zero.

Ms. Belzer replied that every time a new "big box" store opened in one city, general merchandise revenue sales were reduced in other "big box" stores in other cities. In her opinion, there would be no new sales within the general area. The revenue would be moved around from city to city or sales would be cannibalized, particularly from the two nearby districts. She introduced her assistant, Shanti.

Commissioner Sharma believed that some out of area shoppers could be attracted to a Wal-Mart if it were located off I-880.

Chairperson Cohen had a series of questions that centered more on economic impacts:

- How would a Wal-Mart economically affect the Warm Springs and Irvington District local businesses?
- Were there studies that showed how Wal-Mart would affect the anchor retailers in Warm Springs and Irvington?
- Did that study show how Wal-Mart could impact the locally serving retailers?
- Were there similarities between Target, the anchor store in the City's Downtown, and Wal-Mart where revenues could be drawn away from Target?
- Could there be a negative effect of the Downtown development, if Target were negatively affected by Wal-Mart at this location?
- In the short run, the City could expect an increase in taxes. However, in the long run, would Wal-Mart represent a potential decrease in property taxes?

Ms. Belzer and Shanti replied:

- Wal-Mart used convenience goods to bring shoppers in to buy other general merchandise.
- An impact study for the Wal-Mart that opened in San Leandro in 1998 showed that between 1990 and 1995 when four other Wal-Mart discount stores opened in Union City, Fairfield, Livermore and Manteca, drug store sales declined significantly (six million dollars) in the first years and deepened (ten million dollars) following the second years of each opening.
- Yes, the locally serving retailers could be expected to show similar drops in revenues.
- The two retailers sold similar items and were competitors in many categories.
- Sales leakage from the City prior to the opening of Target was approximately 40 million dollars. Projected sales at Target were approximately 40 million dollars. Therefore, there was probably not much more leakage from the City.
- The assessed evaluation of a retail store was less than the assessed evaluation of high-density housing or office use. Long-term sales tax trends against long-term property tax trends had not been analyzed. Intuitively, Wal-Mart would not be as "exciting" concerning property taxes as it would be in relation to sale taxes.

Chairperson Cohen stated, for the record, that he had not had any conversations with Ms. Belzer before this hearing. However, he had spoken with Mr. Wolfe and, a long time ago, with Ms. Davidoff. He asked about the adequacy of the EIR regarding the nine lane versus ten lane issue.

Mr. Wolfe believed that the improvements would not be adequate, because his consultant concluded that the number of lanes totaled only nine lanes and a tenth lane could not be added without moving a high power transition tower or if an easement across a service station property was condemned. The applicant's consultant agreed that there were nine

physical lanes, but the one dual purpose lane could be counted as a total of ten. Mr. Wolfe's consultant countered that one could not take one lane and allow one to make a right turn, travel straight, or make a left turn and call it three lanes. Therefore, the mitigation conclusion was unsustainable.

Vice Chairperson Weaver asked if other areas had been looked at during the course of the studies that would be more appropriate for a Wal-Mart without the problems this location presented.

Mr. Wolfe confessed that they had heard a rumor that Wal-Mart was interested in a site on Stevenson Boulevard west of I-880. It would be speculative to compare the impacts of that site with the site currently under consideration. The BART issue would seem to be less significant at that location.

Ms. Belzer agreed that a rumor had been heard that another site was being considered, not as an alternative site, but as another site for another Wal-Mart. The I-880 corridor carried much more traffic than the I-680 corridor and was much more of a regional route. If capturing sales from outside of the City was the goal, that site was a better choice.

Chairperson Cohen asked the Commission if a break should be taken at this time.

Commissioner Wieckowski stated that he had some follow-up questions regarding that location. He asked if the applicant was obligated to consider a project at an alternative location, or did an alternative location just need to be identified, as required by CEQA.

Mr. Wolfe replied that if there was a feasible, less speculative, reasonable alternate location for a project and it could avoid or lessen significant impacts, yes; there was a duty to evaluate that location in the EIR. The site seemed feasible if Wal-Mart was looking at it.

Commissioner Wieckowski opined that the BART people should be asked about that rumored, alternative location.

Commissioner Natarajan asked if the City's chances to bring higher-end retail stores into the Downtown and the neighborhood centers would be hampered by a Wal-Mart at the location presently under consideration. She noted that other value-oriented stores were already in The Hub or were planned for The Hub.

Ms. Belzer replied that, in her opinion, if Target was undermined or performed less well than anticipated, because people might choose Wal-Mart over Target, the Downtown could be impacted. Target's image of being value oriented, hip and urban was the image that was being projected for Downtown. Therefore, everything should be done to ensure the success of Target, rather than worrying about how the City was seen because of the other value oriented stores within the City.

Commissioner Natarajan asked if Ms. Belzer knew what uses had gone into the former Wal-Mart "big boxes" when they were shut down.

Ms. Belzer stated that many call centers used those sites, which were not always the highest paid use. The Eco Store in Kansas was originally designed to be reused as housing, although it had not happened. Ms. Lin concurred.

Chairperson Cohen adjourned the meeting for ten minutes at 9:10 p.m.

Chairperson Cohen called the meeting back to order at 9:22 p.m.

Chairperson Cohen suggested that Items 3, 5 & 6 should be continued to April 10th, because it was expected that the present item would go beyond the 11 o'clock rule.

IT WAS MOVED (WIECKOWSKI/NATARAJAN) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION CONTINUE ITEM NUMBERS 3, 5 AND 6 TO APRIL 10, 2003:

Commissioner Thomas stated that she would be unable to attend the April 10th meeting.

Item 3. CAROL COMMONS – 41482 Fremont Boulevard – (PLN2003-00018) – to consider a General Plan Amendment to change the land use designation from medium-density residential, 15-18 dwelling units per acre, to medium-density residential, 18-23 units per acre and a Mitigated Negative Declaration under CEQA for a 0.99-acre site in the Irvington Planning Area.

Item 5. TENTATIVE MAP 7618 EXTENSION – 45330 Warm Springs Boulevard – (PLN2003-00145) - to consider an extension of Tentative Tract Map 7618 for a seven-lot industrial subdivision located at the southeast quadrant of Warm Springs Boulevard and Grimmer Boulevard in the Industrial Planning Area. The City previously certified and approved a Mitigated Negative Declaration for the development of this project.

Item 6. ZION CHURCH OF PRAISE – 39600 & 39604 Sundale Avenue - (PLN2003-00154) - to consider a Preliminary and Precise Planned District for a religious facility and accessory dorm facilities on 10.42 acres in the Irvington Planning Area. A Mitigated Negative Declaration has been prepared for this project.

Chairperson Cohen asked if anyone had planned to speak in opposition to Item 6. He stated that he saw no one. He announced that Item 6 was continued to April 10th.

A speaker from the public asked if it would be on consent on April 10th.

Chairperson Cohen stated that it would not be on consent on April 10th, because he knew of at least one Commissioner who did not want it on consent.

The motion carried by the following vote:

AYES:	6 – Cohen, Natarajan, Sharma Thomas, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Harrison
RECUSE:	0

Item 2. WALMART – 3045 Skyway Court – (PLN2000-00070; PLN2001-00290) – RESUMED

Chairperson Cohen resumed the public hearing for Wal-Mart, PLN2000-00070; PLN2003-00041.

Tom Blalock, BART Director, District No. 6, representing Southern Alameda County, stated, for the record, that he had spoken with Chairperson Cohen and the attorney for the labor union. Both had encouraged him to oppose this application. He stated that he did not want BART to be the “whipping boy for Wal-Mart.” He stated that he had received two letters from the union: one that asked him to meet with them and the second letter that had been received by all of the Commissioners with the clipped Argus article. Yesterday’s Argus had a letter to the editor from a fellow BART director, who did not mention that he was from San Francisco. He held very strong and narrow views on matters of this kind. Mr. Blalock stated that he had a great deal of faith that the City would be able to pull together the transit oriented development at the Warm Springs BART. He hoped that by solving one problem, another was not created somewhere else, such as the school district, or the water or sanitary districts.

BART's plans were on track and the BART extension project had enough new riders to quality under BART's recently enacted BART extension policy. If new trips were generated from transit oriented development, it would be a big plus. Approximately 8,200 new riders were expected when BART eventually reached Warm Springs. As far as he knew, BART had not officially expressed an opinion concerning the Wal-Mart project. When considering the expected 8,000 additional trips per day for Wal-Mart, he encouraged the Commission to consider how many trips per day would be expected for other land uses in comparison. He acknowledged working with Commissioner Natarajan when she was part of the City's staff and looked forward to working with the City concerning residential development at the BART station, which he believed would come with the eventual economic upturn. He mentioned the transit oriented development at the Richmond station, which would have multifamily units, a parking garage, child care and a cultural center, and the Fruitvale TOD that could be seen by BART riders, which would also have a childcare center, a clinic, a cleaner and service functions for riders and residents.

Commissioner Natarajan stated that the Commission had a letter from Malcom Quint who suggested in his letter that BART was not opposed to Wal-Mart, per se, but plans for the BART station included development up to this Wal-Mart location. She asked if the City could be putting the cart before the horse, if this project was approved before the results of a current study were known.

Mr. Blalock opined that the study would not be finished for about two years and he doubted that Wal-Mart would be willing to wait for the results.

Vice Chairperson Weaver asked for a copy of the letter to the editor.

Commissioner Natarajan offered her copy to Vice Chairperson Weaver.

Commissioner Sharma asked if the speaker was asking that the Commission not deny the project because of BART or was he saying that Bart would support the Wal-Mart project.

Mr. Blalock replied that BART had already acted on the EIR and one Director was obviously opposed to Wal-Mart. Sometimes, when the vote was 8 to 1, this Director's vote was the one vote. He stated that he was neutral on the project, and he reiterated that he did not want the project to be denied because of what would happen with BART in the future.

Richard Fierro, resident, expressed concern about the 7,925 daily trips, which broke down to 350 trips per hour. He wondered if more lanes could handle the additional trips, considering the current traffic flow in that area. He asked if the approximately 300 jobs at this site would cause loss of jobs elsewhere if cannibalization occurred elsewhere in the City. He did not believe that economic reasons should be used to override air quality problems.

Chica Ruvalcaba, 27 year resident, thanked the Commissioners who rejected the original project a few years ago. She noted that City traffic engineers had estimated that the Pacific Commons project would generate 4,000 trips per day and Wal-Mart would add 8,000 trips. These additional trips would be along the worst traffic corridor in the City between I-680 and I-880. The proposed Warm Springs BART station would add several thousand more trips. She did not believe the few traffic mitigations would make the traffic "magically disappear." Cumulative vehicle emissions from the additional traffic, along with construction emissions could not be mitigated. However, the EIR reported that if this location was used as a business park and/or industrial, fewer impacts would result on air quality and traffic. Trips per day were estimated at 3,190. The specific overriding benefit would be additional sales tax dollars, which, in her opinion, would sacrifice the City's residents' quality of life. She believed that "quality of life was worth more than a sprawling discount center in this location." She urged denial.

Cynthia Cuddy, Niles District resident for 30 years, encouraged the Commission to preserve the historic business districts and reject the Wal-Mart project. Redevelopment money that had gone to Niles, Irvington and Centerville helped to keep their heritages in their downtown districts, which already drew people from out of the area. She believed that the proposed Wal-Mart location could deal a devastating blow to the many fine Irvington businesses and could undo much of the exceptional redevelopment that had taken place there. She encouraged support of the continuing redevelopment of Irvington by rejecting the Wal-Mart on Auto Mall Parkway.

Rudy Visaya, local resident, recalled that he had spoken before the Commission and the City Council three years ago in objection to this Wal-Mart location. He did not believe that the claimed increase in revenue taxes would override the negative impacts to air quality and traffic. He also believed that these taxes would be shifted from other retailers within the City and would create no additional revenue for the City. The study that supported the EIR revenue conclusions became out dated when Target opened its store Downtown. Consequently, another report should be commissioned. It should include the pay and benefit levels associated with the lost jobs due to Wal-Mart locating within the area. The new jobs would actually be jobs shifted from elsewhere in the City and would be low wage, with poor benefits and inadequate health insurance. The average Wal-Mart employee made 15 thousand dollars a year when working full time. He stated that Wal-Mart had the lowest percentage of full time employees who had health insurance of any other major employer. The City had a duty to substantiate the claims of the specific overriding benefit.

Commissioner Sharma asked the speaker to elaborate on his belief that employed people would leave their current employers to work for Wal-Mart.

Mr. Visaya replied that he believed the redistribution would occur when Wal-Mart took jobs from the other area retailers and they were forced to shut down.

Dominic Chiovare, Teamsters Local No. 70 representative, stated that his local members were very concerned about this project. He raised the issue of Revitalization vs. Cannibalization. Because the previous speakers had covered most of his concerns, he focused on cannibalization of smaller retailers in the area, as happened when Wal-Mart came into an area. He claimed that traffic studies were not needed, because one had to travel along any of the congested streets to see what the vehicle traffic was like. In his opinion, if Wal-Mart located at Auto Mall Parkway and on Stevenson Boulevard west of the I-880 freeway, the small shopping centers would become vacant, because their tenants could not compete with Wal-Mart. He asked that Wal-Mart be told, "No."

Michael Cardoza, long time resident of the Irvington District, stated that he was opposed to allowing Wal-Mart to locate on Auto Mall Parkway. He admitted that he shopped the Wal-Mart in Milpitas, but he believed traffic was already unbearable in the area, and the continuing redevelopment efforts in the Irvington District would be severely hampered. He considered Wal-Mart to be a downtown main street under one roof with deeply discounted prices.

Commissioner Sharma asked if he opposed locating a Wal-Mart anywhere in the City or if he was opposed to this location for Wal-Mart.

Mr. Cardoza replied that he believed Wal-Mart would have a negative economic impact on the Irvington District, but he would approved its location somewhere else in the City.

Cliff Staton, Greenbelt Alliance representative, expressed serious concerns about the Wal-Mart project, which he believed threatened both the local environment and the creation of more livable communities within the City. Other uses for the site could produce 60 percent less vehicle trips than those estimated for Wal-Mart. The project also conflicted with the

vision of the transit village that BART had proposed for the Warm Springs station, which would endanger the overall vitality of the future transit village and could strike a serious blow to the development of a vibrant Downtown Fremont. If this store expanded into groceries, he estimated that it could take 10 million dollars in sales from existing grocery stores that anchor neighborhood shopping centers.

Commissioner Sharma asked this speaker, and all future speakers, if they would indicate if they were opposed to Wal-Mart at this location, only, or were they opposed to Wal-Mart locating anywhere in the City.

Mr. Staton stated that the Greenbelt Alliance was opposed to Wal-Mart locating on this site, only.

Tom Federico, Irvington resident, stated that a Long's was located on the corner of Driscoll Road and Paseo Padre Parkway. He was not sure if it was in Irvington or in Mission San Jose. He had noticed that two long-time record stores had closed since Target had opened in The Hub. He stated that he avoided Auto Mall Parkway and used other streets, such as Washington Boulevard. He stated that he had attended the recent town hall meeting with Council Member Cho and Council Member Cho believed that most Wal-Mart associated trips would be during off-peak hours. If off-peak hours were eight hours a day, 1000 cars per hour would be added to already congested Auto Mall Parkway. He believed that Fremont residents who lived north of Mowry would not travel to the Wal-Mart on Auto Mall Parkway, but would choose to shop at the Wal-Mart in Union City, because it would be faster. He was not opposed to Wal-Mart locating in another area of the City.

Commissioner Sharma stated that the Warehouse Corporation went bankrupt and it was not due to Target locating in The Hub. However, Tower Records might have been negatively impacted by Target.

Lillian de la Torre, life-long Fremont resident, complained about the time it took her to travel from Paseo Padre Parkway to her home because of the traffic. She stated that she suffered from Asthma and could hardly breathe now and she wondered how the additional pollution would affect her breathing. Emergency technicians could not get to her home if she had an emergency because of the traffic congestion. She stated that it was ridiculous to add this large store that would create more traffic and health problems for the residents in the area. She would approve the Wal-Mart being located somewhere else in the City "where there were not so many old people and children."

Rosalie de la Torre complimented the Commission on its expertise and business acumen. She wondered about the Wal-Mart rhetoric heard at this meeting. In her opinion, adding lanes to Auto Mall Parkway would generate more traffic. The big picture (she believed, as seen by Wal-Mart and was not seen by the City and its residents) had to do with its stock price. Wal-Mart was not concerned about its products or the local citizenry, but it needed to satisfy its shareholders. She did not believe that Wal-Mart would be interested in a win-win situation. It had a reputation of being a bully and could be defiant, as shown in Hayward when it was not approved. There were other equally good locations in the City, but she believed Wal-Mart would only be interested in doing things its way and where it wanted, rather than what would be best for the City. "Nobody tells Wal-Mart what to do."

Rocky Fernandez, originally a Fremont resident, stated that he now lived in Castro Valley where there were no "big boxes." He knew from personal experience that it was difficult getting to Fry's from I-680; to go from Fry's to Home Depot was tough; and he could not imagine how one could get to Wal-Mart without traffic problems, no matter how many lanes were added. If a customer was willing to use his automobile to go to Wal-Mart on Paseo Padre Parkway, he could go to McCarthy Ranch, Union Landing, or any of the three Targets

in the Tri-City area without the traffic. He shopped for electronics, home improvement goods, outdoor gear, and food and medicine and he did not need this Wal-Mart to fulfill his needs.

Amber Crabbe, Transportation and Land Use Coalition, stated that the Coalition was made up of over 90 regional organizations and performed transit and land use advocacy all over the Bay Area Region. She urged denial of the Conditional Use Permit application for all the reasons already voiced and because it was inappropriate, given its proximity to the proposed BART station. The proposed site should be included within the TOD area, although it was technically outside of it. She stated that her organization planned to release the Best and Worst Developments in the Bay Area within the next two months. One positive project in each Bay Area county would be detailed, along with the worst development in the county that represented the best and worst in that particular county. In Alameda County, both projects were in Fremont. The best project was the Benton Development next to the Fremont BART station with 322 housing units, 64 of them affordable, and mixed use with shops on the ground floor. The worst project was this Wal-Mart project, because it was not mixed use, not high density and not pedestrian oriented.

Chairperson Cohen asked how, in her opinion, would Wal-Mart in its proposed form impact the urban village concept adjacent to area BART stations.

Ms. Crabbe replied that small businesses usually located within the urban villages and she believed that Wal-Mart would pull customers from them and drive them out of business. The quarter-mile radius was not necessarily relevant, as a fence did not go up at .25 miles from the stations and discourage people to walk to the station. She stated that she had walked further to attend this meeting. Allowing Wal-Mart to locate on the proposed site would be a wasted opportunity for the proposed transit village. Wal-Mart could locate elsewhere.

Chairperson Cohen summarized that the speaker believed a Wal-Mart located one-half mile away was still close enough to hamper commercial development of the transit village. He asked if she had any anecdotal incidents or studies that could suggest that was the case.

Ms. Crabbe answered that the Strategic Economics consultants had covered it.

Chairperson Cohen asked the applicant to close with her rebuttals.

Ms. Davidoff stated that nothing about the BART Specific Plan required project planning within the half-mile area to be put on hold. The Specific Plan had not been funded and a consultant had not been hired, which made the results of the study to be two years away, at best. It was not reasonable to expect any development on this site to stay on hold until the study was completed. Development at other BART stations went out to just one quarter mile around the station. Pedestrian walkways and a bus stop would be provided by Wal-Mart, which would encourage pedestrians and public transit use. Research and Development jobs were important. However, Wal-Mart would provide job diversity, which was also important. She disagreed that the Sedway report was out of date. However, the newer Thomas report could not be considered outdated and it had found significant retail leakage outside the City of approximately one billion dollars. She quoted from the Thomas report stating that this location was exactly where it had recommended that this type of use be located. This project was consistent with the General Plan, the zoning, the use permit findings, and the vision and goals of the City. City staff had spent more than five years analyzing this project and found it to be consistent. The City had a fiscal crisis and Wal-Mart would provide additional sale tax revenues. These objections were not raised when Fry's, REI and Home Depot applied for Conditional Use Permits in this area. Wal-Mart was the same kind of retailer. She urged that the project be approved.

Chairperson Cohen stated that he wanted to clear up the nine lanes versus ten mitigation measure.

Ms. Davidoff stated that the current lane improvements were consistent with what was looked at in the EIR. She understood that there would be nine lanes and ten movements with one lane allowing for two movements.

Commissioner Sharma reminded the applicant that the speakers did not say that Wal-Mart was not wanted in the City. The location was the issue.

Ms. Davidoff stated that she appreciated his comments, but wondered why the same issues had not come up with the other nearby "big box" retailers. These same issues might cause a denial for Wal-Mart.

Chairperson Cohen stated that one of the reasons for a denial was that Wal-Mart had come after all the others and a cumulative effect had occurred.

Commissioner Wieckowski asked what the CEQA plan was to mitigate the loss of flood storage. He asked if the current plan was to build three retention ponds and would they be with or without a filtering system.

Mr. Karn replied that a series of holding areas would be developed that included ponds, along with an underground pipe system. The water would be "detained, as opposed to retained," and filtered through grassy areas, which was the best management practice for filtering runoff.

Commissioner Wieckowski asked how the 67,000 cubic feet of retained water would impact the property owners downstream, which could also experience flooding during a 100 year flood situation.

Mr. Karn stated that if the water overflowed (which it would not), it would back up and go out of the creek exactly as before. The FEMA maps were incorrect and did not adequately address the storm drainage system that existed underneath the railroad at this time. This plan would provide a net benefit. In reality, the 67,000 cubic feet of storage did not exist at this time, but would when the project was finished.

Commissioner Thomas asked what was the storage area that was to be located at the rear of the store and what would it look like. She asked if the storage at the other area at the back of the store would be container-type. From the front of the store, someone parked on that side had a clear line of sight right down to that area.

Mr. Karn stated that the first storage area would provide storage for empty pallets until they could be picked up. The landscaping in that area would be denser to provide screening. The shipping containers would look like a series of doors by shoppers who were parked on that side. Screening in front of the doors would not allow their use and that area had to be kept open for fire access.

Commissioner Natarajan recalled that earlier Mr. Karn had alluded to adding special elements to the design. She asked for an elaboration. She asked that site planning be addressed first.

Mr. Karn stated that the store was set to the back of the property and a fully landscaped aisle that moved away from the street would allow the customer to drive all the way through the site. A turnout would be provided near the front for large item pick up. Landscaping would help to control circulation.

Commissioner Natarajan stated that the site planning seemed to be focused on vehicular circulation, rather than the impact from the street. Other industrial areas along Osgood Road

were adjacent to the street and even Fry's addressed the street with parking on the side and back, which was not what was planned for this site and which was a fundamental shift from what other development was currently on Osgood Road.

Mr. Karn stated that this Wal-Mart would have two entrances, unlike an office building in an industrial development with more entrances. Parking people at the back of the building would be inconvenient for Wal-Mart's customers, because the merchandise would exit from one of the two front doors. If the building was moved toward the street with parking around the building, no one would park at the back and the front door would be inundated. This was a different use from an industrial development and the parking needed to be planned differently. The truck dock at the rear was separated from the other vehicles for safety.

Commissioner Natarajan did not see anything that was site specific. This was the typical Wal-Mart prototype that functioned best for vehicles, but not for pedestrians and not for convenient access from the street. The back would be seen from BART and the City considered the BART route to be a City scenic route. The landscaping was being used to screen storage, but not to enhance the building and its architecture and was fundamentally flawed.

Mr. Karn stated that pedestrians and vehicles needed to be kept separate. Therefore, the front door had to be at the back of the site. A sidewalk would be part of the tree-lined avenue and would end at the street at the bus stop for the safety of any pedestrians who might use public transit.

Commissioner Sharma agreed this site was laid out like any other Wal-Mart in any other city.

Mr. Karn stated that it was a standard commercial layout for any commercial user and to not do that would be folly.

Commissioner Natarajan stated that she would not belabor the issue. However, it was a big box with standard Wal-Mart materials, split face and horizontal bandings.

Steve, architect, stated that the immediate north, west and east side of the project had buildings made of steel or were tilt-up with horizontal banding. This building design was similar and would conform to the architecture in the immediate surroundings.

Commissioner Sharma asked about the building across the street from Osgood Road.

Mr. Karn stated that was the Read/Rite building and it was very horizontal with more glass, but was used differently. He showed landscaping treatments and parapets that were not standard Wal-Mart design.

Commissioner Sharma opined that this store was almost the same as the Wal-Mart at McCarthy Ranch.

Mr. Karn stated that Wal-Mart wanted to continue the Wal-Mart image and both the image and the community needs had been addressed.

Photos were shown of other nearby buildings that had details similar to what was proposed for this building.

Chairperson Cohen closed the public hearing and suggested a continuance.

Commissioner Sharma stated that he probably could not attend the April 24th meeting.

Commissioner Thomas asked if another through lane would be added in the middle. She asked if the length of the lane would be longer than the current left-turn lane.

Senior Transportation Engineer Odumade stated that the median would be narrowed to allow for the addition of another lane. The lane would be substantially longer (approximately 30 percent), but he could not say how many automobiles it would accommodate.

Commissioner Sharma stated that he had counted the cars using the current left-hand turn lane and it could accommodate ten standard sized SUVs. If a big rig needed to turn left, it used up most of the lane. Therefore, an extra left hand lane that was 30 percent longer, could probably accommodate 15 cars with a total of approximately 30 compact cars for the two lanes, if there were no big rigs or large vehicles.

Senior Transportation Engineer Odumade stated that the two left-turn lanes were not always equally used, so it was difficult to estimate how many cars they could accommodate.

Commissioner Sharma believed that the issue was how the traffic would truly be impacted after the road improvements. He was not convinced that an extra lane that would accommodate, at most, ten large cars would take care of the expected extra traffic at that intersection.

Senior Traffic Engineer Odumade stated that the service analysis showed that the improvements would allow a substantially increased level of service, compared to what was there at the present time. The total intersection had to be considered, rather than how it would handle flow from just one direction.

Commissioner Wieckowski asked when the Council decided the commercial industrial overlay that allowed for 500 thousand square feet of commercial space.

Planning Director Marks guessed that it was probably approved sometime in 1993 or 1994.

Commissioner Wieckowski asked if those assumptions were still valid.

Planning Director Marks replied that site-specific analysis had been performed and it was current and valid.

Chairperson Cohen summarized that this project would have a significant affect on the environment, based upon the increased traffic. The traffic could be mitigated by altering the road. One of the mitigation measures was to alter Auto Mall Parkway and Osgood Road. He asked what the specific mitigation that was proposed in the Draft EIR.

Jane Bierstedt, Principal with the transportation consultants, Fehr & Peers, stated that specific mitigation measures were to add a northbound, left-turn lane, and to convert a through lane to a shared through and right-turn lane at the intersection of Auto Mall Parkway and Osgood Road.

Chairperson Cohen asked where that specific mitigation measure was found in the EIR.

Ms. Bierstedt stated that it had been clarified in several of the responses to comments.

Consultant Purcell stated that this set of improvements had not been contracted out at the time of the preparation of the Draft EIR, so it was shown as a mitigation measure.

Chairperson Cohen asked if the Draft EIR stated that there would be five lanes in each direction.

Ms. Bierstedt read, "The addition of a northbound, right turn lane, the addition of a second northbound, left-turn lane, a second eastbound left-turn lane, and a second northbound, right-turn lane."

Chairperson Cohen noted that the mitigation measure did not say that one of the additional lanes would be shared.

Consultant Purcell stated that in the Level of Service calculation had calculated it as a shared through and right-turn lane.

Chairperson Cohen stated that it seemed that the evaluation was not consistent with the suggested mitigated measure . . .

Ms. Bierstedt stated that it was the wording. She acknowledged that the text in the Draft EIR could have been clearer in how it described the improvements. The effectiveness of the measure and how it was analyzed as mitigation in the Draft EIR was done based on the correct set of improvements, which was a shared through and turn lane.

Consultant Purcell stated that it had been clarified in the Final EIR and it was only a text issue and was not a substantive problem.

Chairperson Cohen wondered if it had really been clarified when the responses noted that nine rather than ten lanes were proposed and did not mention a shared through lane.

Much conversation continued to ensue about the number of actual lanes that would mitigate the traffic and what was meant in the Draft EIR with no consensus reached.

Chairperson Cohen asked the other Commissioners if they wished to continue this item to allow comments to be made by the Commission or if they preferred to make their comments at this meeting.

Commissioner Thomas apologized that she would be absent for the meeting on April 10th, which affected the Commission's decision.

Chairperson Cohen asked if Commissioner Sharma would be in attendance on April 24th.

Commissioner Sharma stated that he would not be in the area on the 24th and he did not want to miss his opportunity to speak.

Commissioner Natarajan suggested a continuance to either April 10th or April 24th.

IT WAS MOVED (WIECKOWSKI/) THAT THE PLANNING COMMISSION CONTINUE THIS ITEM TO APRIL 10, 2003.

Ms. Davidoff asked that the Commission make a decision at this meeting, as a month's delay was unreasonable.

Chairperson Cohen agreed that a month was too long and the 10th would be more appropriate.

Mr. Wolfe agreed with the applicant and requested a decision be made that evening.

It was decided that the Commissioners would make their comments at this meeting.

Commissioner Thomas understood the City's need for sales tax revenues and the reasons that the City was in favor of the project. She had no strong feelings about most of the issues

brought up by the various speakers. The design of this specific store had elements that she was unhappy with. However, the most overriding concern was the traffic, as was the concern of the people she had spoken with over the years about this project. Currently, the Auto Mall Parkway traffic level was not acceptable. While driving in the area between five and six o'clock today, she could not see that the road improvements would provide a level of service that the surrounding neighborhoods would be comfortable with. Consequently, she was not in favor of the project.

Vice Chairperson Weaver stated that Commissioner Thomas had addressed one of her concerns. She was not sure that the traffic and air quality mitigations were appropriate. The second issue was the project's proximity to the TOD. The character of the area would be changed in an inappropriate manner. She agreed that the one million dollars that leaves the City in sales tax revenue would not be captured. She was "not willing to sell the soul of the City for 400 thousand dollars," so she would not support the project.

Commissioner Natarajan agreed with the two previous Commissioners. The last time this project came before the Commission, Chairperson Cohen did a wonderful job explaining why it did not comply with the General Plan. She believed that the same issues still held. This was a tremendous opportunity to make a regional transit center work. It could be lost because of a use that was the antithesis of a transit-friendly center. The site planning and the architectural design had nothing to do with Fremont and did not relate to Fremont. It was a "big box" that one could see anywhere. It was faceless and was placed away from the street with no connections. This was a chance to design a transit center correctly the first time, instead of revisiting it years down the road and trying to change it then. She could not support the overriding considerations. There would be no clear economic benefit for the City. There would be no social benefit when it would impact the neighborhood, impact other smaller businesses, have nothing to do with enhancing the community nor create a sense of place. What constituted a community was not any one thing, but it was a series of small, meaningful interactions, most of which were trivial, but added up to a public sense of identity and a web of public respect and trust. The absence of that trust would lead to disaster on the public street. She would not support the project.

Commissioner Sharma believed that the issue was this specific location and the City was not saying no to Wal-Mart. He would not support the project, because of the traffic that would be created, the air quality and the quality of life for Fremont residents that would be diminished. He stated that he had commuted down that road for over 15 years and knew what the conditions were like. He believed that the road improvements would help the current traffic conditions. However, when a big rig needed to make a turn into the Wal-Mart site, all traffic would stop until that turn was made, because those big trucks could not stay in their lane when making a turn. The improvements were needed whether or not Wal-Mart came onto the site. He believed that a better solution could be found elsewhere in the City. Enough was enough in that area. The City would not go broke because Wal-Mart was not approved for this location. He wanted to see concrete proof that "at the end of the day, we would pocket a half-million dollars and 500 Fremont residents would benefit from that project." He still could not understand why this location was chosen by Wal-Mart. If the Stevenson Boulevard location had been chosen, it would be the first time that the City might actually take money from Newark instead of the other way around. Therefore, he was not in favor of Wal-Mart at this location. Commission Sharma indicated that there were other locations suggested for Wal-Mart. He said the densities at other locations would enhance Wal-Mart shoppers. Commission Sharma indicated that there were other locations suitable for Wal-Mart store. He indicated the densities at the other location would enhance Wal-Mart shoppers.

Commissioner Wieckowski appreciated the comments made by Mr. Karn that clarified the hydrology and water quality issues and he believed that such a system would mitigate the adverse effects on water quality that were raised by the Regional Board. The staff report

indicated that the cumulative air quality effects would be significant and they had not been sufficiently mitigated. He believed that the Commission could not adopt the statement for overriding considerations because of the many points that were raised: The diversity of shopping, the generation of a variety of jobs, generation of revenues, the adverse impact on the existing industrial uses, as well as some of the land use issues, were not met, so he would not support the project.

Chairperson Cohen stated, for the record, that the Commissions' comments were important, because the minutes would be available to the City Council, assuming this decision would be appealed. Mayor Morrison had correctly pointed out many times that the Planning Commission was the filtering body. It was the Planning Commission's role to scrutinize and because the Commissioners were appointed, they had a certain degree of freedom to exercise an opinion that sometimes was "freer than the elected officials," which was how the process was supposed to work. He believed that he had received an indirect answer to his question about the possibility that Wal-Mart was considering an additional location within the City. He believed that Wal-Mart wanted to build a store at this location and at another location, as well, because they would not state that they had no interest in another City location. The EIR was supposed to consider other feasible alternatives that would accomplish the goal of the project. The other alternatives were not considered, because Wal-Mart did not want to consider them. The City wanted the EIR to consider them, because the maximum tax revenue was wanted with the least impact. Wal-Mart went through the same scrutiny in every town in which they wished to locate, and they knew how to get approval for the project they wanted in the way they wanted. This project was the best example from what he had read. He agreed with Commissioner Sharma. It was the location that was the issue and the effects that Wal-Mart would have. It was not Wal-Mart inherently. Locating a Wal-Mart on Stevenson Boulevard or west of I-880 had a greater chance of increasing the tax revenue and capturing tax revenues from other sources besides our own City's uses than the present use at this location. He wondered why Wal-Mart would not consider something that would help the City rather than creating controversy and problems. He paraphrased Ms. Ruvalcaba's comments when she asked if the quality of life should be sacrificed for additional tax revenue. The answer was no. The Final EIR included many condescending comments about criticisms made, particularly when it dismissed his comments by stating that certain issues were not EIR issues, but land use and Conditional Use issues. That was not true. He read from the regulations: 15126.6, "The EIR shall discuss any inconsistencies between the proposed project and the applicable General Plans and Regional Plans." He further commented, "If the inconsistency in the General Plan has physical effects on the environment that can be traced to, and the EIR was devoid of a discussion about how the inconsistencies of the General Plan are traced to the physical effects on the environment." "15131 economic or social effects may be used to determine the physical changes caused by the project." The Final EIR provided a summary of his comments when this project was first heard by the Commission. He stated that his comments started on page 12.0-3 and ended on 12.0-9 and he asked that they be included in these minutes.

Commissioner Wieckowski made a motion that the statements made by Chairperson Cohen in the Final EIR be made a part of the minutes of this meeting.

Chairperson Cohen continued that not only did his comments amply demonstrate the project's inconsistency with the General Plan, but also they related to the Commission's inability to approve a Conditional Use Permit. It was common sense that a viable Downtown would be difficult to create if this Wal-Mart project was approved at this location. However, an expert spoke to this issue, just as an expert spoke to the issue of Warm Springs and the Irvington area and to the Stevenson Boulevard location west of I-880. "15042 of the Regulations say that a public agency may disapprove a project, if necessary to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." The EIR demonstrated that there would be significant, unavoidable impacts on the environment. Because of that, the Commission would not certify the EIR, would not

approve the project, would not approve a Conditional Use Permit and certainly could not make the finding of overriding considerations. There was a way to make this project work, but not at this location.

IT WAS MOVED (WIECKOWSKI/THOMAS) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION FIND THE FINAL ENVIRONMENTAL IMPACT REPORT IDENTIFIED SIGNIFICANT UNAVOIDABLE IMPACTS THAT COULD NOT BE MITIGATED TO A LESS THAN SIGNIFICANT LEVEL;

AND

THERE WERE NOT SPECIFIC OVERRIDING ECONOMIC, LEGAL, SOCIAL, AND TECHNOLOGICAL OR OTHER BENEFITS TO CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT, AS SUBMITTED, AS ARTICULATED BY THE VARIOUS MEMBERS OF THE COMMISSION.

The motion carried by the following vote:

AYES: 6 – Cohen, Natarajan, Sharma Thomas, Weaver, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 - Harrison

RECUSE: 0

IT WAS MOVED (WEAVER/THOMAS) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION DENY THE CONDITIONAL USE PERMIT, AS ARTICULATED BY THE VARIOUS MEMBERS OF THE COMMISSION.

The motion carried by the following vote:

AYES: 6 – Cohen, Natarajan, Sharma Thomas, Weaver, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 - Harrison

RECUSE: 0

Chairperson Cohen advised the applicants that they had ten days to file an appeal to the City Council. A fee would be required.

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Information from Commission: Commission members may report on matters of interest.

Commissioner Sharma asked how the Mission Peak Geotechnical study was progressing.

Planning Director Marks replied that staff hoped to bring an option back to the Commission within the next four weeks.

Assistant City Attorney Seto stated that a meeting would be held with the community to discuss the options before the study was ready to bring back to the Commission.

Commissioner Sharma asked if it might come to the Commission on April 24th.

Planning Director Marks stated that the study would be ready to present to the Commission after that date.

Planning Director Marks reminded the Commission and the public that the next meeting would be held on April 10, 2003.

Commissioner Sharma asked if a meeting would be held on April 24th, since one would be held on April 10th.

Planning Director Marks stated that a meeting would be held on April 24th, as there would be new items to be heard on that date.

Meeting adjourned at 12:00 midnight.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Dan Marks, Secretary
Planning Commission